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UNITED STATES	)	
	)	MOTION TO PRE-ADMIT EVIDENCE
v.	)	
	)	
SALIM AHMED HAMDAN	)	
	)	October 1, 2004

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1. Timeliness. This motion is being filed in a timely manner within the parameters established by the Presiding Officer.

2. Relief Sought. The Prosecution requests that the evidence identified in this motion be pre-admitted into evidence in the case of United States v. Hamdan.

a. The following evidence the Prosecution seeks to pre-admit is attached to this motion (or it is specifically stated that it is not attached). Those pieces of evidence marked as For Official Use Only or Law Enforcement Sensitive are Protected Information in accordance with the Presiding Officer's Protective Order #2 of August 27, 2004. As such they are filed under seal at this point in time. References to "Bates" numbers are to serve as a reference for Defense Counsel with respect to the previously provided discovery. For purposes of this motion, it is described as follows:

- 302 dated 1-30-02 (Bates 1-9)
- 302 dated 2-12-02 (Bates 10-13)
- 302 dated 3-8-02 (Bates 14-17)
- 302 dated 4-3-02 (Bates 18-20)
- 302 dated 5-1-01 with attached photos (Bates 21-28)
- 302 dated 5-17-02 (Bates 29-30)
- 302 dated 5-22-02 (Bates 31-32)
- 302 dated 5-26-02 (Bates 33-34)
- 302 dated 6-26 to 7-9-02 (Bates 35-56)
- 302 dated 8-6-02 (Bates 57-66)
- 302 dated 8-19-02 (Bates 67-68)
- 302 dated 8-24-02 (Bates 69-71)
- 302 dated 8-26-02 (Bates 72)
- 302 dated 11-8-02 (Bates 73)
- 302 dated 11-13-02 with attachment (Bates 74-77)
- 302 dated 12-05-02 (Bates 78)
- 302 dated 12-16-02 (Bates 79-80)
- 302 dated 12-23-02 (Bates 81-84)
- 302 dated 1-14-03 (Bates 85-86)
- 302 dated 2-26-03 (Bates 88)
- 302 dated 3-18-03 (Bates 89)
- Form 40 dated 17 May 03 (Bates 90-99)
- Form 40 dated 16 Jul 03 (Bates 100)
- Form 40 dated 15 Jul 03 (Bates 101)

- Form 40 dated 21 Apr 03 (Bates 104-105)
- Form 40 dated 24 May 03 (Bates 106-107)
- 302 dated 2-24-02 (Bates 108)
- 302 dated 8-23-02 (Bates 109-112)
- 302 dated 2-10-02 (Bates 113-119)
- 302 dated 7/30-31/2002 (Bates 321-329)
- 302 dated 8-3-02 (Bates 330-334)
- 302 dated 10-04-02 (Bates 335-338)
- 302 dated 10-10-02 (Bates 339-341)
- 302 dated 10-16-02 (Bates 342-344)
- 302 dated 10-23-02 (Bates 345-347)
- 302 dated 10-31-02 (Bates 348-349)
- 302 dated 11-7-02 (Bates 350-352)
- 302 dated 11-8-02 (Bates 353-354)
- 302 dated 11-15-02 (Bates 355-357)
- 302 dated 12-20-02 (Bates 359-361)
- 302 dated 1-17-03 (Bates 362-364)
- 302 dated 1-24-03 (Bates 365-366)
- 302 dated 10/12-13/03 (Bates 370-378)
- 302 dated 01/27-31/2001 (Bates 379-408)
- 302 dated 9/17-10/2/01 (Bates 409-481)
- 302 dated 10/18/01 (Bates 482-486)
- 302 dated 11/04-06/01 (Bates 487-490)
- 302 dated 01/22-25/2001 (Bates 491-526)
- Form 40 dated 18-20 May 03 (Bates 533-539)
- Form 40 dated 15 Jun 04 (Bates 545-560)
- Form 40 dated 14 Jun 04 with accompanying photos and translations (Bates 577-611)
- Signed statement of 14 Jun 04 (Bates 612-620)
- Form 40 dated 26 May 03 (Bates 633-635)
- Tape and Transcript of bin Laden aired on CNN and MSNBC (transcript provided Bates 183-189)
- Tape and transcript of USS COLE video/CD with video/CD cover (Bates 190-212)
- Tape and transcript of Saliba speech (transcript at Bates 213-227)
- Tape and transcript of Kab bin Malik (transcript at Bates 228-243)
- Hand drawn maps by Hamdan provided during February 2002 interviews (Bates 639-640)
- 22 Photos taken in relation to interview of Accused 2/16/02 (not attached as provided to Defense on a CD) (Bates 859)
- 29 photos taken in relations to interview of Accused 3/13/02 (not attached as provided to Defense on a CD) (Bates 860)
- Exhibits (photos) used during interview in May 18-20 2003 (not attached) (Bates 861-879)
- Photos used during Accused's interview of 5/17/2003 (Bates 880-927)

- Photos used during interview of Accused 5/01/02 (Bates 928-932)
- Photos relating to June 2004 interview with certified translations. (Bates 1552-1615)
- FBI 302 dated 05/5,10,15/2002 (Bates 1451-1460)
- FBI 302 dated 11/04/02 (Bates 1461-1465)
- FBI 302 dated 02/03/2001 (Bates 1472-1485)

b. In addition to the protected information we seek to pre-admit above, the Prosecution also seeks to pre admit the following additional evidence which is not filed under seal:

- Al Fadl transcript of Embassy Bombing trial testimony (Bates 122). This is not attached to this motion as it consists of 996 pages.
- 1998 Fatwa with Arabic translation (Bates 130-133)
- Islamic Nuclear Bomb with Arabic Translation (Bates 134-136)
- 1996 Declaration of Jihad with translation (Bates 137-167)
- Address by President Clinton on Military Actions Against Terrorist Sites in AF and Sudan on August 20, 1998 (Bates 168-170)
- INS Determination that Accused is not a naturalized U.S. citizen (Bates 171-182) (assumes no stipulation as to citizenship)
- Al Quds newspaper article of May 14, 1998 with translation (Bates 276-284)
- Transcript and tape of ABC news interview of bin Laden aired on June 10, 1998 (transcript at Bates 285-294)
- Transcript of CNN interview of bin Laden aired on May 10, 1997 (Bates 295-303)
- Statement of Abu Jandal to al Quds (Bates 1508-1535)

### 3. Facts

- b. The Prosecution has provided extensive discovery to the Defense commencing in December of 2003. To date over 2000 pages of materials have been provided.
- c. The Prosecution anticipates seeking to admit into evidence Federal Bureau of Investigation (FBI) 302's and Criminal Investigation Task Force (CITF) Forms 40 documenting interviews of various people (most prevalent those documenting interviews of the Accused).
- d. The Prosecution will also seek to admit other evidence that has also previously been provided to the Defense in discovery.

### 4. Law Supporting the Request for Relief Sought

Under Military Commission Order (MCO) No. 1, section 6(D)(1), the standard of admissibility for evidence is “probative value to a reasonable person.” The Prosecution is confident that this standard can be met with respect to the evidence described above. While we understand that the Defense might contest the factual accuracy of this evidence, we feel there is little doubt that it is admissible. It will be for the Members of the Commission to decide the weight to give to this evidence.

As is evident from the list above, this case involves a voluminous amount of evidence. In the interest of judicial economy the Prosecution seeks to pre-admit this evidence. Taking this step is even more crucial in light of the remote trial and the detrimental impact that uncertainty and having to confront unforeseen issues mid-trial will create.

Pre-admitting evidence is clearly favored in both the U.S Federal and courts-martial systems. Rule 104 of the Federal Rules of Evidence (and the comparable Military Rules of Evidence) clearly contemplates the pre-admission of evidence and even allows relaxed rules in making admissibility determinations.

It will be to the benefit of all parties to identify those pieces of evidence where admissibility is not contested. For those portions of the proposed evidence above where the Defense does contest admissibility, the Prosecution intends to lay the appropriate foundation during testimony on the merits. It is not our desire to bring all of the sponsoring witnesses to Guantanamo on two separate occasions.

5. Oral Argument. The Prosecution is prepared to provide oral argument on this motion but is optimistic that these issues can be resolved without the necessity of oral argument.

6. Legal Authority.

- a. MCO No. 1
- b. Federal Rule of Evidence 104
- c. Military Rule of Evidence 104

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Commander, JAGC, USN  
Prosecutor  
Office of Military Commissions